

Notice of Allowability

Application No.

10/657,810

Examiner

Yelena G. Gakh, Ph.D.

Applicant(s)

DASSEUX ET AL.

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Response of 03/30/05 and Terminal Disclaimer filed 05/24/05.
2. ☒ The allowed claim(s) is/are 23-58.
3. ☒ The drawings filed on 08 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. Terminal Disclaimer filed 05/24/05 is approved.

Allowable Subject Matter

2. **Claims 23-58** are allowed. The new numbering of claims is 1 through 34.

The following is an examiner's statement of reasons for allowance: the examiner agrees with the applicants' arguments regarding rejections over the prior art applied in the previous Office action. The new prior art found by the examiner, i.e. Holland et al. (Rapid Commun. Mass Spect., 1996) teaching "rapid identification of intact whole bacteria based on spectral patterns using matrix-assisted laser desorption/ionization with time-of-flight mass spectrometry" (Title); Krishnamurthy et al. (Rapid Commun. Mass Spect., 1996) teaching "rapid identification of bacteria by direct matrix-assisted laser desorption/ionization mass spectrometric analysis of whole cells" (Title); Welham et al. (Rapid Commun. Mass Spect., 1998) discloses "the characterization of micro-organisms by matrix-assured laser desorption/ionization time-of-flight mass spectrometry" (Title); Lynn et al. (Rapid Commun. Mass Spect., 1999) disclosing "identification of *Enterobacteriaceae* bacteria by direct matrix-assisted laser desorption/ionization mass spectrometric analysis of whole cells" (Title) and Edwards-Jones et al. (J. Med. Microbiol., 2000) teaching "rapid discrimination between methicillin-sensitive and methicillin-resistant *Staphylococcus aureus* by intact cell mass spectrometry" (Title) do not teach or fairly suggest using Fourier Transform mass spectrometry for identifying at least one endogenous molecule that differs in abundance between a first cell population and a second cell population by comparing FTMS peak profiles of two cell populations.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yelena G. Gakh, Ph.D. whose telephone number is (571) 272-1257. The examiner can normally be reached on 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/31/05



**YELENA GAKH
PRIMARY EXAMINER**